



**The Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

**Matter of:** Mactek Industries Corporation--Request for  
Reconsideration

**File:**

B-223718.2

**Date:**

August 22, 1986

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## DIGEST

Request for reconsideration of decision dismissing protest challenging contracting agency's affirmative responsibility determination is denied where protester makes no reasonable showing of possible fraud or bad faith in connection with the determination.

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## DECISION

Mactek Industries Corporation (Mactek) requests reconsideration of our prior decision which dismissed its protest against the award of a contract to Presco International (Presco) by the Department of the Army under invitation for bids (IFB) No. DAAK07-86-B-C105. We deny the request for reconsideration.

In its original protest, Mactek contended that Presco was not a responsible contractor and that the Army erred by awarding the contract without first conducting a preaward survey. We dismissed the protest because our Office does not review affirmative determinations of responsibility, absent a showing that contracting agency personnel may have acted in bad faith or that definitive responsibility criteria contained in the solicitation were not met. We found that neither of these exceptions under which we will review affirmative responsibility determinations was alleged or evident in this case. Further, while a contracting officer must determine a bidder's responsibility before award, and may conduct a preaward survey to help do so, a preaward survey is not a legal prerequisite to an affirmative determination of responsibility. Freund Precision Inc.--Reconsideration, B-216620.2, Jan. 4, 1985, 85-1 CPD ¶ 19.

In its request for reconsideration, Mactek contends that the basis of its protest was that the affirmative responsibility determination was the result of preferential treatment afforded to Presco by the contracting officer. As evidence of this preferential treatment, Mactek stated that on prior contracts Presco either made delivery late or was granted

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delivery time extensions on terms more favorable than similar extensions granted to Mactek under its own prior contracts. Mactek also stated that the Army made other favorable modifications to a prior contract at Presco's request. For example, Mactek stated that under the prior contract, Presco was granted a valuable waiver of inspection requirements for minimal consideration. Mactek apparently was contending that award to Presco in this case, like the modifications under the prior contracts, demonstrates favoritism by the contracting officer toward Presco.

When a protester alleges fraud or bad faith on the part of contracting officials, some reasonable showing beyond a bare allegation is necessary before we will consider such a complaint. See Policy Research, Inc., B-200386, Mar. 5, 1981, 81-1 CPD ¶ 172. Here, the only evidence Mactek offered are certain modifications under prior contracts which Mactek argues should not have been granted to Presco. In our view, Mactek failed to make any reasonable showing that those modifications rejected improper preferential treatment or that merely because of those modifications the affirmative responsibility determination in this case might have been the result of preferential treatment toward the awardee.

In its reconsideration request, Mactek has offered nothing beyond what it presented in its original protest, and thus has failed to demonstrate that our prior decision was erroneous as to fact or law. The request for reconsideration, therefore, is denied.

*for Seymour Efron*  
Harry R. Van Cleve  
General Counsel